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May 26, 2006

Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5739, Democracy for America and Kathy Hoyt, as treasurer

Dear Mr. Norton:

This is the response of our client, Democracy for America (the "Committee" or "DFA") and Kathy Hoyt, as treasurer, to the complaint filed in the above-captioned Matter Under Review ("MUR"). In short, and as fully demonstrated below, DFA had no connection with the activities complained of and should not have been named as a respondent in this MUR. DFA respectfully requests that your office recommend that the Commission find no reason to believe that the Committee committed any violation of the Federal Election Campaign Act of 1971, as amended, ("FECA" or the "Act") and close this file as it pertains to the Committee, as expeditiously as possible.

The complaint in this matter alleges that a purported political action committee called "Eastside Democracy for America" or "Eastside DFA" produced and distributed a video and hosted an event for the Darcy Burner for Congress campaign ("Burner Committee"). The sole mention of this respondent, Democracy for America, is complainant's statement, offered without support of any kind, that "Eastside DFA is a local spin-off of Democracy for America, the national PAC created by Howard Dean during the 2004 Democratic Presidential primaries [sic]". Importantly, the complaint does not allege that DFA produced or distributed the video in question, hosted the event in question, had any other connection to the activities complained of, or otherwise violated FECA, because, as shown below, DFA did not.¹

¹ Pursuant to the Commission's regulations, a complaint shall "clearly identify as a respondent each person or entity who is alleged to have committed a violation" and "shall contain a clear and concise recitation of facts which describe a violation." While the complaint herein may be sufficient with respect to certain named respondents, it unquestioningly falls far short with respect to DFA. It neither identifies DFA as a respondent nor alleges that DFA has committed a violation. Further, the complaint contains no facts

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1. DFA had no involvement with the production or distribution of the video in question or with the Burner campaign event.

As a factual matter, DFA had no connection whatsoever with the activities complained of – see the attached *Affidavit of Executive Director Tom Hughes* (“DFA Affidavit”) – and was not aware of them until reports of this complaint surfaced in the media, just a few weeks ago. DFA did not produce the video and had no knowledge of or other involvement in the production of the video. *Id* at ¶ 3. DFA did not reproduce or distribute the video and had no knowledge of the reproduction or distribution of the video. *Id* Finally, DFA did not host, pay any expense of, have any role with, or otherwise have any knowledge of the event held for the Burner Committee. *Id* at ¶ 4. Simply put, the activities mentioned in the complaint occurred without the involvement of or knowledge by DFA.²

Consequently, and as a matter of law, the complaint should be dismissed with respect to DFA on these grounds alone. If DFA did not pay for the video or have any involvement in its planning, production or distribution, it cannot be legally responsible. Similarly, if DFA did not pay for or participate in the campaign event, it cannot be legally responsible. There is no conclusion by which any involvement in or knowledge of the activities complained of can be attributed to DFA, and there is, therefore, no basis for a finding of reason to believe with respect to this Committee.

2. DFA is not responsible for the activities of Eastside Democracy for America.

In addition to a complete lack of involvement in or knowledge of the activities complained of, DFA also has no connection with the other respondents in this matter. Complainant significantly mischaracterizes Eastside DFA as a “spin-off” of the Committee.³ While the Act contains no legal definition of “spin-off,” it seems to imply some relationship that does not exist.

When Howard Dean created DFA, subsequent to leaving the race for the 2004 Democratic presidential nomination, he decided to create a federal political committee to support other Democrats running for office at the federal, state and local levels. The record reflects, through even a cursory reading of the Committee’s FEC reports, a significant commitment to this goal by making over \$1million in contributions in 2004. DFA capitalized on the momentum of the presidential campaign in order to help specific candidates across the country.

describing a violation by DFA, and therefore, is insufficient as a procedural matter and must be dismissed on these grounds alone

² To date, DFA has not seen the video in question

³ Complainant also somewhat mischaracterizes DFA’s formation, it was not in any way created by Howard Dean while he was a candidate for office, but only afterwards when he was no longer a candidate

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However, many of the individual and grass roots supporters of the presidential campaign also had a desire to help candidates in their areas around the country. They took the initiative to form state and local groups. DFA had no role in this activity. DFA did not form, establish or sponsor any of these groups. DFA does not direct, instruct or control them and, in fact, has no role with respect to their decision-making process. DFA did not finance these groups or provide them with funding.⁴ DFA did not assist them with raising any funds of their own. *Id* at 5.

In addition, as indicated above, DFA itself is organized as a federal political committee. It is not organized as an association or membership organization under Internal Revenue Service Rules. It is an independent or non-connected political committee and has no connected organization(s).


The fact that supporters of Howard Dean's former presidential bid have been inspired at the grass roots level to set up their own groups in order to get involved in the political process does not – and should not – reflect on DFA's own activity. DFA has no intent to be responsible for those groups. They are truly volunteer, grass roots organizations.⁵

3. *Conclusion.*

Accordingly, the innuendo, as contained in the complaint, that DFA is somehow responsible for the actions of Eastside DFA – or any other group – is entirely without merit. DFA is its own independent organization, without any related committees, chapters, divisions, or any other entities, regardless as to what it may be called. Consequently, nothing in the complaint indicates, by even the most remote connection, that DFA has engaged in the activity described therein or otherwise violated any provision of FECA. As indicated above and in the attached DFA Affidavit, the Committee was not involved with the video or the Burner event,

For the reasons stated above, DFA respectfully requests that your office recommend that the Commission find no reason to believe that the Committee and Kathy Hoyt, as treasurer, committed any violation of the Act and close this file as it pertains to the Committee, as expeditiously as possible.

Respectfully submitted,


Eric F. Kleinfeld
Counsel for Democracy for America

Enc.

⁴ DFA's FEC reports reflect corroboration of this fact

⁵ DFA did not either encourage or discourage the use of names similar to DFA's own. Certainly, in the absence of any other meaningful link, the use of a similar name is dispositive of nothing, when, in fact, DFA likely could not have prevented such use, either through enforcement, legal action or otherwise

BEFORE THE FEDERAL ELECTION COMMISSION

In re MUR 5379, Democracy for America)

DECLARATION OF TOM HUGHES

I, Tom Hughes, do hereby certify:

1. I am Executive Director of Democracy for America ("DFA"), a federal political committee, registered with the Federal Election Commission, Id. No. C00370007.
2. DFA is an independent political committee with a federal and a non-federal account. DFA has no connected organization(s).
3. I am not aware of any involvement by DFA or its representatives in the production, reproduction or distribution of a video by a group called Eastside Democracy for America. DFA did not help plan such a video, nor did it pay for any of the costs associated with such a video.
4. I am not aware of any involvement by DFA in an event held on behalf of or in connection with the Darcy Burner campaign. DFA did not help plan such an event, nor did it pay for any of the costs associated with such an event.
5. DFA did not establish Eastside Democracy for America, nor does it direct or control its activities. DFA has never provided any funds to Eastside Democracy for America. DFA operates independently of Eastside Democracy for America.

I declare under penalty of perjury that this declaration is true and correct.

Signed: _____

Tom Hughes

Date: _____

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